

## Vermont House of Representatives Discrimination Prevention Panel Rules of Procedure

### Rule 1. DEFINITIONS

As used in these rules:

(1) “Complainant” means a person who has experienced or believes themselves to have experienced discrimination or retaliation in violation of the Policy and has contacted the Panel regarding the alleged violation.

(2) “Investigator” means an attorney or another independent individual or entity with expertise in the area of workplace harassment and discrimination with whom the Panel has contracted to investigate the allegations in a formal complaint.

(3) “Panel” means the House Discrimination Prevention Panel.

(4) “Panel staff” means employees of the Office of Legislative Human Resources, the Office of Legislative Operations, and the Office of Legislative Counsel who provide administrative, technical, and legal support to the Panel, as well as outside counsel or investigators retained by the Panel.

(5) “Policy” means the House of Representatives’ Policy for the Prevention of Discrimination.

(6) “Potential complainant” means a person ~~identified by a witness or other individual as a person~~ who may have experienced discrimination or retaliation in violation of the Policy.

(7) “Regulated individual” means a member of the House of Representatives, the Clerk of the House, or an employee in the Speaker’s office or the Clerk’s office.

(8) “Respondent” means an individual who is alleged to have engaged in conduct that violates the Policy.

(9) “Supervisor” means an individual employed in a supervisory role in any office of the General Assembly.

### Rule 2. ~~INFORMALLY~~ CONTACTING THE PANEL

(a)(1) Any person may ~~informally contact a member of the Panel to~~ discuss an incident or conduct ~~with any member of the Panel or inquire about the policy~~ without initiating the ~~formal Panel’s~~ complaint process.

(2) To the extent possible, the identity of a complainant or potential complainant shall not be disclosed to anyone except the Panel members and Panel staff without the consent of the complainant or potential complainant.

(b)(1) If a complainant ~~or potential complainant~~ discusses an incident or conduct with a Panel member, the Panel member shall explain the Policy and the different options for resolution, including ~~an informal a~~ resolution under Rule 3 and the formal complaint process under Rules 5–17.

(2) If a witness discusses an incident or conduct with a Panel member, then, based on information provided by the witness, the Panel member shall approach the potential complainant to discuss the incident or conduct and to determine if the potential complainant would like to pursue ~~an informal a~~ resolution under Rule 3 or the formal complaint process under Rules 5–17.

(3) If a supervisor or an employee of the Office of Legislative Human Resources

discusses an incident or conduct with a Panel member, then, based on information provided by the supervisor or employee of the Office of Legislative Human Resources, the Panel member shall approach the potential complainant to discuss the incident or conduct and to determine if the potential complainant would like to pursue an informal a resolution under Rule 3 or the formal complaint process under Rules 5–17.

(c) In every instance in which a Panel member is informally contacted regarding an incident or conduct, the Panel member shall inform the potential complainant and any witness, supervisor, or employee of the Office of Legislative Human Resources other person who has communicated with the Panel member regarding the incident or conduct that, regardless of whether the potential complainant wishes to pursue a resolution of the incident or conduct:

(1) the Panel member is required to inform the other Panel members of the incident or conduct;

(2) the Panel may need to gather additional information regarding the incident or conduct; and

(3) the Panel is obligated to take immediate and appropriate action to ensure that conduct that violates the Policy does not continue. [prevent conduct that violates the Policy from continuing]

~~(d) The Panel shall work in consultation with the Office of Legislative Human Resources or the Office of Legislative Counsel, or both, in determining how to proceed with respect to any incident or conduct that is brought to the Panel's attention pursuant to this section.~~

### **Rule 3. INFORMAL COMPLAINT RESOLUTION PROCESS WITHOUT FORMAL COMPLAINT**

(a) If a complainant requests an informal a resolution after speaking with a member of the Panel pursuant to Rule 2, the Panel member shall promptly inform the other Panel members of the incident or conduct and of the complainant's request that an informal a resolution be attempted.

(b) The Panel shall gather information about the incident or conduct as necessary and shall consult with either the Office of Legislative Human Resources or Office of Legislative Counsel, or both, as appropriate.

~~(c)(1) Two or more Panel members shall meet with the regulated individual to attempt an informal resolution.~~ may attempt any of the following resolutions in consultation with the complainant and with the consent of the regulated individual:

(A) mediation;

(B) facilitated dialogue; or

(C) discussion of the incident or conduct with the respondent.

(2) The Panel shall create a brief record of the incident or conduct, the resolution, and any additional actions taken by the Panel. The record shall be kept confidential and shall not be disclosed to anyone except a member of the Panel or the Panel's staff pursuant to the provisions of Rule 20.

(3) The If the complainant is not present for the resolution, the Panel members shall notify the complainant of the results of the meeting outcome.

(d) Following an informal a resolution under this Rule, the Chair of the Panel shall promptly inform the Speaker that there was an informal a resolution but not of the

incident or conduct at issue; the identity of the complainant or the regulated individual; or of any witness, supervisor, or employee of the Office of Legislative Human Resources or other person that communicated with the Panel regarding the incident or conduct at issue.

#### **Rule 4. PREVENTIVE ACTION**

(a) In any instance in which a potential complainant elects not to pursue an informal a resolution pursuant to Rule 3 or a formal resolution complaint regarding an incident or conduct after speaking with a Panel member pursuant to Rule 2, the Panel member shall promptly inform the other Panel members of the incident or conduct.

(b) If the Panel determines in consultation with the Office of Legislative Human Resources or the Office of Legislative Counsel, or both, that the alleged incident or conduct could constitute a violation of the Policy, the Panel shall gather information about the incident or conduct as needed.

(c) The Panel shall take immediate and appropriate action to prevent a regulated individual from committing further violations of the Policy if it determines that the alleged incident or conduct could constitute a violation of the Policy. Appropriate actions may include informally contacting the regulated individual alleged to have engaged in conduct in violation of the Policy, the implementation of an interim safety plan, or the initiation of the formal process against the regulated individual by the Panel on its own motion.

#### **Rule 5. FILING A FORMAL COMPLAINT**

(a)(1) If a complainant decides to pursue the formal process, the complainant shall submit a written complaint to any member of the Panel. The complaint does not need to be in any specific format and may be written by or on behalf of the complainant.

(2) The complainant may either:

(A) submit an electronic copy of the complaint to a member of the Panel by electronic mail; or

(B) provide a signed physical copy of the complaint directly to a member of the Panel.

(b)(1) The Chair shall ensure that copies of the complaint are provided to all members of the Panel and to Panel staff as appropriate.

(2) If a Panel member other than the Chair receives a complaint, the Panel member shall immediately notify the Chair and provide the complaint to the Chair.

(c) The complaint shall include a description of the conduct at issue and identify the regulated individual who allegedly engaged in that conduct.

(d) A person may submit a complaint to the Panel about a current regulated individual regarding conduct that allegedly occurred at any time during which the individual was a regulated individual or, for members of the House of Representatives, conduct that occurred during official General Assembly events between the date on which the member was elected and the date on which the member was formally sworn in.

(e) Upon receiving a complaint, the Chair shall promptly inform the Speaker that a complaint has been filed but not of the identities of the complainant and the regulated individual or of the alleged conduct at issue.

(f) A complainant may elect to pursue a resolution pursuant to Rule 3 in lieu of

proceeding with the formal complaint at any time. If a complainant elects to pursue a resolution pursuant to Rule 3, the complainant's formal complaint shall be stayed pending the outcome of the resolution and the complainant may elect to proceed with the formal complaint if the resolution is unsuccessful.

**Rule 6. PRELIMINARY REVIEW OF FORMAL COMPLAINT; RESPONSE**

(a)(1) Upon receiving a formal complaint, the Panel shall review the complaint as soon as practicable to make an initial determination regarding whether the allegations in the complaint, if true, could constitute a violation of the Policy.

(2) The Panel shall consult with the Office of Legislative Human Resources or the Office of Legislative Counsel, or both, in making an initial determination pursuant to this subsection.

(b)(1) If the Panel determines that the allegations in the complaint, if true, could constitute a violation of the Policy, it shall send a copy of the complaint to the respondent pursuant to subsection (c) of this section.

(2)(A) If the complaint does not contain any allegations that may constitute a violation of the Policy, the Panel shall dismiss the complaint and notify all parties of the decision. The Panel shall provide the parties with an opportunity to meet with two members of the Panel to discuss the reasons for the Panel's decision.

(B) After dismissing the complaint, the Chair shall notify the Speaker that the complaint has been closed but not of the incident or conduct at issue or the identity of the complainant or the regulated individual.

(c) For any complaint whose allegations could constitute a violation of the Policy, the Panel shall provide a copy of the complaint to the respondent and request that the respondent file a response to the complaint with the Panel within seven business days. The Panel may extend the time for the respondent to file a response for good cause.

(d) The Panel shall provide to the complainant a copy of any response submitted by the respondent.

**Rule 7. REVIEW OF COMPLAINT AND RESPONSE**

(a)(1) Upon receiving a response or after the time to file a response has passed, the Panel shall review the complaint and any response as soon as practicable to make a determination regarding whether the allegations in the complaint, if true, could constitute a violation of the Policy.

(2) The Panel shall consult with the Office of Legislative Human Resources or the Office of Legislative Counsel, or both, in making a determination pursuant to this subsection.

(3) The Chair shall request that Panel staff provide the Panel with copies of prior complaints made against the respondent to determine if a pattern of conduct in violation of the Policy exists.

(b)(1) If the Panel determines that the allegations in the complaint, if true, could constitute a violation of the Policy, it shall proceed with an investigation pursuant to Rule 8.

(2)(A) If the complaint does not contain any allegations that may constitute a violation of the Policy, the Panel shall dismiss the complaint and notify all parties of the decision. The Panel shall provide the parties with an opportunity to meet with two

members of the Panel to discuss the reasons for the Panel's decision.

(B) After dismissing the complaint, the Chair shall notify the Speaker that the complaint has been closed but not of the incident or conduct at issue or the identity of the complainant or the regulated individual.

(c)(1) If the allegations in the complaint relate to a matter at issue in a pending criminal proceeding in which the respondent is the defendant, the Panel may choose not to take any further action on the complaint until either the criminal proceeding is dismissed or a decision no longer subject to appeal has been issued.

(2) If the Panel decides to stay further action on a complaint pursuant to this subsection, it shall promptly notify the parties of that decision.

(d) If the complaint contains allegations that may constitute a violation of the **General Assembly House or Senate** Policy for the Prevention of Sexual Harassment, the Panel shall identify the allegation that may constitute a violation of that Policy and shall inform the complainant of the complainant's right to submit a complaint to the appropriate panel pursuant to that Policy and of the names of the members of that panel. The Panel may also, in its discretion and with the consent of the complainant, refer allegations that may constitute a violation of the **General Assembly House or Senate** Policy for the Prevention of Sexual Harassment to the appropriate panel directly.

#### **Rule 8. INVESTIGATIONS**

If the Panel determines that the allegations in the complaint, if true, could constitute a violation of the Policy, it shall retain outside counsel or contract with an investigator to investigate the allegations. The contract shall outline the scope of work to be done, including a requirement that outside counsel or the investigator, as applicable, produce a report with a determination as to whether the Policy has been violated.

#### **Rule 9. REVIEW OF INVESTIGATIVE REPORT**

(a) Upon receiving the report from outside counsel or the investigator, the Panel shall promptly provide a copy of the report to the complainant and respondent.

(b) The Panel shall review the report and shall make a preliminary determination as to whether the respondent committed a violation of the Policy.

(c) If, after reviewing the report, the Panel makes a preliminary determination that the respondent did not commit a violation of the Policy:

(1) The complaint shall be closed and remain confidential.

(2) Two or more Panel members may meet with the complainant and respondent, either separately or together, and shall summarize the basis for the Panel's determination.

(3) The Panel shall draft a brief letter summarizing the Panel's decision, without names or other identifying information, that shall be provided to the complainant and respondent.

(4) The Chair shall notify the Speaker that the complaint has been closed but not of the incident or conduct at issue or the identity of the complainant or the respondent.

(d) If, after reviewing the report, the Panel makes a preliminary determination that the respondent committed a violation of the Policy:

(1) two or more Panel members shall meet with the respondent and complainant, either separately or together, and shall allow the respondent and the complainant to review any documents or evidence that the Panel has obtained in addition to the report

and shall inform the respondent and the complainant of the basis for the Panel's determination; and

(2) the Panel shall take further action as set forth in Rule 10.

**Rule 10. ACTIONS FOLLOWING PRELIMINARY DETERMINATION OF A VIOLATION**

(a) Upon making a preliminary determination of a violation, the Panel shall take action as set forth in subsection (b), (c), or (d) of this Rule.

(b) Issue a written warning to the respondent.

(1) If the Panel issues a written warning to the respondent, the warning shall identify the provision or provisions of the Policy that the Panel finds there are reasonable grounds to believe the respondent violated.

(2) After issuing the warning, the Panel shall provide to the complainant a brief letter summarizing the Panel's action, including a reference to the provision or provisions of the Policy that the Panel finds there are reasonable grounds to believe the respondent violated. The letter shall not contain the names of the complainant or respondent or other identifying information.

(3) After issuing the written warning, the Chair shall promptly inform the Speaker of the disposition of the complaint but not of the incident or conduct at issue or the identity of the complainant or the respondent.

(c) Enter into a mutually agreed to resolution with the respondent and the complainant.

(1) The Panel may attempt to negotiate a resolution between the respondent and the complainant or, with the agreement of the parties, may retain a mediator to assist the parties in reaching a resolution.

(2) If the parties agree to a resolution, both parties shall be provided with a copy of the terms of the resolution and the Chair shall promptly inform the Speaker of the disposition of the complaint but not of the incident or conduct at issue or the identity of the complainant or the respondent.

(d) Draft and present charges and set the matter for a hearing.

(1) The Panel may draft charges for any actions by the respondent that the Panel has preliminarily determined are a violation of the Policy.

(2) The Panel shall provide the complainant and respondent with the charges and the time, date, and location of the hearing on the charges.

(3) The respondent may file an answer to the charges, a copy of which the Panel shall provide to the complainant.

(4) After the date and time have been set for the hearing, the Chair shall promptly inform the Speaker of the incident or conduct at issue and that the Panel has drafted charges and set the matter for a hearing but not the identity of the complainant or the regulated individual.

(5) The complainant and respondent may jointly agree to waive the hearing at any point in the process.

**Rule 11. CONFLICT OF INTEREST**

(a) A Panel member who is a complainant or respondent in a complaint made to the Panel shall not participate in any Panel proceedings or discussions concerning that

complaint.

(b) A Panel member who is a witness in a complaint may be prohibited from participating in Panel proceedings or discussions as the Panel deems appropriate.

**Rule 12. HEARINGS; WHEN HELD**

(a) The Panel shall hold a hearing after charges are drafted, unless the respondent and complainant jointly agree to waive the hearing pursuant to Rule 10(d)(5).

(b) The Panel shall hold a hearing for an appeal filed pursuant to Rule 21 within a reasonable period of time after the hearing is requested.

**Rule 13. CONDUCT OF HEARINGS; STANDARD OF PROOF**

(a) The Chair of the Panel shall preside at any hearing or, if the Chair is unable to participate pursuant to Rule 11, the remaining Panel members shall select a Panel member to preside at the hearing.

(b)(1) The Panel shall retain outside counsel to provide legal counsel and assistance in relation to the hearing.

(2) The Panel shall have the administrative assistance of the Office of Legislative Operations.

(3) The Panel may retain outside counsel or contract with the investigator or another person to prosecute the charges. That person shall present the report to the Panel and may present evidence, call and question witnesses, and present arguments to the Panel.

(c) The Panel shall not be bound by the Vermont Rules of Evidence and may admit any evidence that the Panel considers to be reliable, material, and relevant. The Chair shall make evidentiary rulings that may be overruled by a majority of the Panel present at the hearing.

(d)(1) The burden of proof that a violation occurred is clear and convincing evidence.

(2) This standard indicates that the alleged violation is highly probable or reasonably certain. Evidence is “clear” if it is certain, unambiguous, and plain to the understanding; it is “convincing” if it is reasonable and persuasive enough to cause the Panel to believe it.

[Alternative](d)(1) The burden of proof to establish that a violation occurred is preponderance of the evidence.

(2) This standard means that based on the whole of the evidence before the Panel, it is more likely than not that the alleged violation occurred.]

(e) The decision of the Panel shall not be based solely on hearsay evidence.

(f) The Panel may conduct a single hearing with respect to multiple complaints that relate to either the same respondent or to the same incident or series of incidents.

**Rule 14. RIGHTS OF THE PARTIES**

(a) The complainant and respondent may each have an individual of their choosing present to provide support at the hearing and may hire their own counsel at their own expense.

(b) Counsel, or any individual who is present to provide support, shall not be a potential witness at the hearing.

(c) The complainant and respondent may testify, and the complainant and respondent,

or their attorneys, may present evidence, call and question witnesses, and present arguments to the Panel.

**Rule 15. SETTING OF THE HEARING**

The hearing shall be closed to the public unless the respondent and complainant both agree that it be open to the public.

**Rule 16. OUTCOME OF THE HEARING**

(a)(1) If the Panel finds that there is not clear and convincing evidence that a violation of the Policy occurred, it shall dismiss the complaint.

(2) The Panel shall meet with the respondent and complainant, either separately or together, and shall summarize the basis for the Panel's determination.

(3) The Panel shall provide to the respondent and complainant a brief letter summarizing the Panel's action but with no names or other identifying information.

(4) The Chair shall notify the Speaker that the complaint has been dismissed but not of the identity of the complainant or the respondent.

(b)(1) If the Panel finds that there is clear and convincing evidence that a violation of the Policy occurred, the Panel shall recommend corrective action as set forth in Rule 17.

(2) After corrective action has been recommended, the Chair of the Panel shall meet with the Speaker and shall inform the Speaker of the nature of the complaint and the identities of the complainant and of the respondent and summarize the basis for the Panel's determination and the recommended corrective action. This meeting shall not be necessary if the Speaker has previously received this information.

**Rule 17. RECOMMENDATION OF CORRECTIVE ACTION**

(a) After determining that a violation of the Policy occurred pursuant to Rule 16, the Panel shall make a recommendation of corrective action to the appropriate entity as set forth in this Rule.

(b)(1) If the regulated individual is a Representative, corrective action may include counseling or training, removal from a committee or committee leadership, censure, or expulsion from the House. The Panel shall recommend corrective action as appropriate pursuant to House Rules.

(2) If the regulated individual is the House Clerk, corrective action may include counseling or training, censure, or removal. The Panel shall recommend appropriate corrective action to the House Committee on Rules. The House Committee on Rules shall determine the appropriate action and may propose a resolution for House consideration imposing that action.

(3) If the regulated individual is an employee of the Speaker or House Clerk, recommended corrective action may include counseling or training, reprimand, loss of pay or vacation days, demotion, or termination. The Panel shall meet with the Speaker or House Clerk, as applicable, and shall present its findings and recommendation for corrective action. The Speaker or House Clerk, as applicable, shall impose appropriate corrective action.

**Rule 18. PUBLIC STATEMENT**

After the imposition of the following corrective actions, the Panel Chair ~~or~~, in

consultation with the Speaker, as appropriate, shall issue a public statement that shall include the nature of the complaint, the identity of the regulated individual, and a summary of the basis for the Panel's determination and for the corrective action:

- (1) if the regulated individual is a Representative, removal from a committee or committee leadership, censure, or expulsion from the House;
- (2) if the regulated individual is the House Clerk, censure or removal; and
- (3) if the regulated individual is any other employee of the General Assembly, demotion or termination.

#### **Rule 19. TIME PERIODS**

The Panel shall conclude any investigation and hearing and shall recommend any corrective action as soon as reasonably possible.

#### **Rule 20. CONFIDENTIALITY**

(a) In order to encourage persons who believe that they have experienced discrimination attributable to a regulated individual to feel comfortable contacting members of the Panel and pursuing a formal Panel process, members of the Panel; Panel staff; and any attorney, individual, or entity that the Panel has contracted with resolution through the Panel, the Panel and Panel staff shall maintain the privacy and confidentiality of all parties that contact the Panel to the greatest extent possible as provided pursuant to this section.

(b) Except to the extent necessary to investigate an alleged violation of the Policy, to carry out the provisions of these rules, or as permitted pursuant to subsection (c) of this rule, the Panel and Panel staff shall keep confidential:

- (1) any information obtained and under the Policy and these Rules;
- (2) all Panel discussions and deliberations related to an alleged violation of the Policy; and
- (3) all records produced or acquired in accordance with the Policy and these rules except to the extent necessary to carry out an investigation of an alleged violation of the Policy or as otherwise set forth in these rules.

(c) A complainant may grant the Panel and Panel staff a limited waiver of the requirements of this section for purposes of communicating with entities that have jurisdiction over the incident, conduct, or alleged violation of the Policy that is before the Panel.

~~(b)~~(d) All records produced or acquired in accordance with the Policy and these rules are not subject to the Public Records Act.

#### **Rule 21. APPEALS**

A complainant or respondent may appeal the Panel's final decision resolving a formal complaint by submitting within 15 days after the Panel issues the decision a concise, written statement to the Chair setting forth a concise statement of the reasons the individual believes the Panel's decision was in error. The statement may include a request that a hearing be held on the appeal pursuant to Rule 12.

#### **Rule 22. MAINTENANCE OF RECORDS**

The Office of Legislative Counsel, in cooperation with the Office of Human

Resources and the Office of Legislative Information Technology, shall maintain all records associated with complaints received or proceedings conducted by the Panel.